TAN SEE MENG & ORS v. ABLE OILS & FATS SDN BHD & OTHER CASES

COURT OF APPEAL, PUTRAJAYA
RAVINTHRAN PARAMAGURU JCA
MARIANA YAHYA JCA
LIM CHONG FONG JCA
[CIVIL APPEAL NOS: W-02(IM)(NCC)-1240-07-2022; W-02(IM)(NCC)-1544-08-2022 & W-02(IM)(NCC)-2041-10-2022]
19 APRIL 2024

Abstract – *(i) In an application for security for costs, when the parties are not foreign parties residing out of jurisdiction or nominal parties acting on behalf for the benefit of others or parties who are constantly changing addresses to evade the consequences of an appeal, they thus do not meet the threshold requirements envisaged in O. 23 r. 1 of the Rules of Court 2012. (i) Unlike in respect of a body corporate incorporated under the Companies Act 2016 ('CA'), impecuniosity is not per se a cogent factor with regard to ordering security for costs. However, when a corporate body is found to be impecunious and unable to pay its costs, security for costs ought to be accordingly ordered pursuant to s. 580A of the CA.*

CIVIL PROCEDURE: *Security for costs – Application for – Whether r. 17 of Rules of the Court of Appeal 1994 ought to be read with O. 23 of Rules of Court 2012 ('ROC') – Whether threshold requirements envisaged in O. 23 r. 1 of ROC met – Whether impecuniosity cogent factor with regard to ordering security for costs – Whether security for costs ought to be ordered pursuant to s. 580A of Companies Act 2016 – Whether just and reasonable to order security for costs*

These were interlocutory applications for security for costs pending the hearing of an appeal in the Court of Appeal. The first to third appellants were Malaysian citizens while the fourth and fifth appellants were Malaysian incorporated private limited companies. The respondent was also a Malaysian incorporated private limited company. The first to third appellants were shareholders of the fourth and fifth appellants. The fourth appellant was in the business of sale of edible oils and also operated a factory that filters and recycles oil for its business. The fifth appellant was dormant but was the registered proprietor of the land that housed the factory operated by the fourth appellant. A call option agreement was entered into between the first to third appellants and the respondent ('agreement') for purposes of the continuing of the aforementioned business and factory operation. By reason of a dispute that arose between the first to third appellants and the respondent in respect of the agreement, the respondent commenced a suit

against the appellants ('suit'). Upon further applications of the respondent pursuant to the suit, the High Court had made certain orders ('decisions'). Dissatisfied with the decisions of the High Court, the appellants appealed. The respondent thereafter applied for security for costs. The respondent contended that the first to third appellants ought to pay security for costs because all the appeals raised by them had no good prospect of success. The respondent further submitted that it was prejudicial and unfair to the respondent if the appellants were allowed to continue to pursue the appeals to put the respondent to be further out of pocket on costs despite that the appellants had yet to pay the past costs awarded to the respondent in the High Court. As a result, the respondent sought for security for costs in the total sum of RM125,000 comprising of RM35,000 unpaid High Court costs and RM30,000 for each of the three appeals. The appellants, in opposing the security for costs application, contended that the respondent failed to demonstrate cogent circumstances to justify the provision of security for costs and that the amount sought by the respondent was manifestly excessive.

Held (ordering security for costs against fourth and fifth appellants)
Per Lim Chong Fong JCA delivering the judgment of the court:

(1) The provision of security for costs in r. 17 of the Rules of the Court of Appeal 1994 ('RCA') must be read with O. 23 of the Rules of Court 2012 ('ROC'). The provision in O. 23 of the ROC are subject to additional considerations which are (i) whether the claim was *bona fide* with good prospect of success; (ii) whether there was an admission in the pleadings or elsewhere that the money was due; (iii) whether there was payment into court of a substantial sum of money; (iv) whether the application for security for costs was being used to stifle a genuine claim; and (v) whether the want of means of the plaintiff was a result of the conduct of the defendant. These are relevant to applications for security for costs in this court. That notwithstanding where it involves a body corporate incorporated under the Companies Act 2016 ('CA'), r. 17 of the RCA must also be read with s. 580A of the CA. It was ultimately the discretion of this court on whether it was just and reasonable to order security for costs on the peculiar facts and circumstances. (paras 13-19)

(2) The first and third appellants were not all foreign parties residing out of jurisdiction or nominal parties acting on behalf for the benefit of others or parties who were constantly changing addresses to evade the consequences of the appeal. They did not meet the threshold requirements envisaged in the O. 23 r. 1 of the RC. Furthermore, *albeit* their appeal may *prima facie* seem weak, but they were not hopeless. As to the first appellant who was a bankrupt and therefore impecunious, unlike in respect of a body corporate incorporated under the CA, impecuniosity was not *per se* a cogent factor with regards to ordering security for costs. (paras 26 & 27)

(3) The first to third appellants failed to pay the respondent the past costs ordered by the High Court. It was an *indicia* of impecuniosity of the second and third appellants too. However, these past costs which were due and payable should be recovered through enforcement proceedings instead of being ordered for security for costs. (para 28)

(4) As for the fourth and fifth appellants, it was plain that the fourth appellant which had been placed under judicial management order ('JMO') was impecunious and unable to pay its costs. Consequently, the security for costs ought to be accordingly ordered pursuant to s. 580A of the CA. As for the fifth appellant which was dormant, it was reasonable to infer that there was no income stream as far as the fifth appellant was concerned. The sole asset of the fifth appellant which was the land that housed the factory operating that produced the edible oil could not be considered for security for costs because it formed part and parcel of the subject matter of the agreement that was now under appeal which may form part of the asset which would ultimately belong to the respondent. The fifth appellant was also impecunious and unable to pay its costs. The respondent had justifiably made out its case that security for costs ought to be ordered against the fourth and fifth appellants. (paras 29 & 30)

(5) There is no mandatory requirement of service of a prior notice to seek security for costs expressly required in s. 44(1) of the Courts of Judicature Act 1964 and r. 17(a) of the RCA. The respondent had not been lackadaisical resulting in inordinate delay in the making of its application for security for costs in the circumstances herein. The appellant also had not demonstrated that it had suffered prejudice in any way as the result of the alleged delay. (para 31)

Case(s) referred to:

Faridah Begum Abdullah v. Dato' Michael Chong [1995] 2 CLJ 951 HC ***(refd)***
Haidakota (M) Sdn Bhd v. Tan Tiam Chai & Another Appeal [2009] 1 CLJ 699 CA ***(refd)***
Kasturi Palm Products v. Palmex Industries Sdn Bhd [1985] CLJU 149; [1985] 1 LNS 149 HC ***(refd)***
Ling Khee Ming v. Ling Shew Kue & Anor [2018] CLJU 1139; [2018] 1 LNS 1139 CA ***(refd)***
Luminous Crossroads Sdn Bhd v. Lim Kong Huat Construction [2002] 5 CLJ 100 HC ***(refd)***
Menon v. Abdullah Kutty [1974] CLJU 92; [1974] 1 LNS 92 FC ***(refd)***
Ooi Meng Khin v. Amanah Scotts Properties (KL) Sdn Bhd & Ors And Another Appeal [2013] CLJU 1517; [2013] 1 LNS 1517 CA ***(refd)***
Sir Lindsay Parkinson Co Ltd v. Triplan Ltd [1973] 2 All ER 273 ***(refd)***
Skrine & Co v. Mbf Capital Bhd & Anor & Other Appeals [1998] 3 CLJ 432 CA ***(refd)***

Legislation referred to:

Companies Act 1965 (repealed), s. 351
Companies Act 2016, s. 580A
Courts of Judicature Act 1964, s. 44(1)
Rules of Court 2012, O. 22A r. 5(1), O. 23 r. 1
Rules of the Court of Appeal 1994, rr. 17(1), 105

A *For the appellants - Awang Armadajaya Awang Mahmud, Hasshahari Johari Mawi, Muhamad Hafizan Shafuan Kamarulzaman & Mahzal Nazrin Mahat; M/s Hasshahari & Partners*
For the respondent - Lim Koon Huan & Siew Ka Yan; M/s Skrine

[Editor's note: For the High Court judgment, please see Able Oils & Fats Sdn Bhd v. Tan
B *See Meng & Ors [2024] CLJU 1091.]*

Reported by Suhainah Wahiduddin

JUDGMENT

C **Lim Chong Fong JCA:**

Introduction

[1] These are interlocutory applications for security for costs pending the hearing of appeal in the Court of Appeal.

D **[2]** The first to third appellants are Malaysian citizens, while the fourth and fifth appellants are Malaysian incorporated private limited companies.

[3] The respondent is also a Malaysian incorporated private limited company.

E **[4]** We heard the applications on 2 February 2022 and unanimously decided as follows:

(i) we order the fourth appellant to pay security of costs of RM50,000 in total in respect of all three pending appeals referred in encls. 31, 37 and 34 within one month from today. We also ordered the Fifth Appellant
F to pay security of costs of RM50,000 in total in respect of all three pending appeals referred to in encls. 31, 37 and 34 within one month from today. If such security is not given within the stipulated time, the respondent is at liberty to apply to strike out Appeals Nos. 1240, 1544 and 2041.

G (ii) case management fixed on 4 March 2024. The pending appeals to be heard after this date.

(iii) we dismiss the application for security for costs against the first, second and third appellants. No order as to costs.

(iv) as for the first to third appellants, the appeals are adjourned until the
H fourth and fifth appellants pay the amount of RM50,000. If security for costs is not paid by 4 March 2024, all three appeals by the fourth and fifth appellants will be struck out. As for appeals by the first to third appellants, the date to hear the appeals will be fixed by the court.

[5] We now provide the grounds of our decision below.

I

Background

[6] The first to third appellants are shareholders of the fourth and fifth appellants.

[7] The fourth appellant is in the business of sale of edible oils and also operates a factory that filters and recycles oil for its business. The fifth appellant is dormant but is the registered proprietor of the land that houses the factory operated by the fifth appellant.

[8] A call option agreement entered into between the first to third appellants and the respondent ("agreement") for purposes of continuing of the aforementioned business and factory operation.

[9] By reason of a dispute that arose between the first to third appellants and the respondent in respect of the agreement, the respondent on 2 June 2022 commenced Kuala Lumpur High Court Suit No. WA-22NCC-246-06/2022 ("suit") against the appellants.

[10] Upon further applications of the respondent pursuant to the suit, the High Court had made the following orders on 1 July 2022, 12 August 2022 and 4 October 2022, respectively ("decisions"):

WA-22NCC-246-06/2022

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DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR
DALAM NEGERI WILAYAH PERSEKUTUAN KUALA LUMPUR
(BAHAGIAN DAGANG)

GUAMAN NO. WA-22NCC-246-06/2022

ANTARA

ABLE OILS & FATS SDN BHD
(No. Syarikat: 201601034916 [1205857-A])

...PLAINTIF

DAN

1. TAN SEE MENG
(No. K/P: 570604-10-6303)
2. TAN SEE NONG
(No. K/P: 440517-10-5147)
3. LIM PECK HONG
(No. K/P: 601206-10-5304)
4. SAWIT RAYA SDN BHD
(No. Syarikat 198301009872 [105130-K])
5. KIAN HUAT OILMILLS SDN BHD
(No. Syarikat: 196501000151)

...DEFENDAN-DEFENDAN

DI HADAPAN HAKIM
ONG CHEE KWAN
PADA 1 JULAI 2022

DALAM KAMAR
MELALUI PLATFORM SIDANG
VIDEO SECARA ZOOM

PERINTAH UNTUK INJUNKSI
(Kandungan 5)

ATAS PERMOHONAN Plaintif yang dinamakan di atas yang ditetapkan untuk pendengaran pada hari ini **DAN SETELAH MEMBACA** Notis Permohonan bertarikh pada 10 Jun 2022

A

PERINTAH UNTUK INJUNKSI
Kandungan 5

ATAS PERMOHONAN Plaintif yang dinamakan di atas yang ditetapkan untuk pendengaran pada hari ini DAN SETELAH MEMBACA Notis Permohonan bertarikh pada 10 Jun 2022 (Kandungan 5), Perintah Untuk Injunksi *Ad Interim* bertarikh 15 Jun 2022 dan semua kertas-kertas kausa yang berkenaan yang kesemuanya difailkan di sini DAN SETELAH MENDENGAR Lim Koon Huan (Karen Tan Wee Sean bersamanya) peguam bagi pihak Plaintif dan Hasshahari Bin Johari Mawi peguam bagi pihak Defendan-Defendan, ADALAH DIPERINTAHKAN bahawa Defendan-Defendan sama ada dengan sendirinya ejen-ejen pekhidmat-pekhidmat,pekerja-pekerja alau sebaliknya bagaimanapun dihalang daripada:

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C

(1) berurusan dengan atau selainnya melupuskan aset, stok. inventories dan bahan mentah dalam simpanan tangki Defendan Keempat (termasuk minyak sawit mentah (crude palm oil), kelapa mentah minyak (crude coconut oil), pemendekan (shortening) dan lemak susu kontang (anhydrous milk fat)) melainkan dan kecuali urntuk tujuan memenuhi kontrak-kontrak yang telah dimasuki di antara Defendan Ke-4 dengan pelanggan-pelanggannya pada atau sebelum 25 Mei 2022, sementara menunggu pelupusan tindakan ini;

D

E

(2) berurusan dengan atau selainnya melupuskan wang dalam akaun bank Defendan Keempat (termasuk United Overseas Bank (Malaysia) Berhad Akaun No: 229-309-070-1 dan Public Bank Berhad Akaun No: 3121-2155-18) dan akaun bank Defendan Kelima (termasuk Malayan Banking Berhad Akaun No: 512642405943) melainkan dan kecuali untuk tujuan pembayaran yang dibuat dalam perjalanan biasa perniagaan (in the ordinary course of business) Defendan Keempat dan/atau Defendan Kelima dan pembayaran untuk pembiayaan (financings) yang diperoleh oleh Defendan Keempat dan/atau Defendan Kelima daripada institusi-institusi kewangan, sementara menunggu pelupusan tindakan ini;

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(3) mengalih keluar alau memusnahkan mana-mana buku, rekod kewangan Defendan Keempat dan Defendan Kelima sementara menunggu pelupusan tindakan ini;

(4) memecat atau menyebabkan pemecatan daripada pengurusan Defendan Keempat, Pasukan Pengurusan Plaintif (termasuk tetapi tidak terhad kepada Tan Chin Yang, Phuar Leong Thye dan Low Shu Hui) yang dilantik menurut Klausa 4 Perjanjian Call Option bertarikh 5 Mac 2021 yang dimasuki di antara Defendan Pertama, Defendan Kedua dan Plaintif yang berkenaan dengan saham-saham dalam Defendan Keempat;

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(5) menghalang wakil-wakil Plaintif (termasuk tetapi tidak terhad kepada Tan Chin Yang, Phuar Leong Thye dan Low Shu Hui) daripada mengakses premis Defendan Keempat di Lot 2227, Jalan Kasawari, Batu 9, Kebun Baru, 42500 Telok Panglima Karang, Selangor;

(6) menyebabkan atau mendapatkan sebarang pertukaran penandatangan akaun-akaun bank Defendan Keempat dengan United Overseas Bank (Malaysia) Berhad (termasuk Akaun No: 229-309-070-1) atau untuk akaun-akaun tersebut, sementara menunggu pelupusan tindakan ini;

sehingga pendengaran tindakan Ini DAN AKH1RNYA ADALAH DIPERINTAHKAN bahawa kos dan kos yang berkaitan dengan permohonan ini dijadikan kes dalam kausa dan pihak-pihak diberi kebebasan untuk memohon.

Bertarikh pada 1 Julai 2022.

RINI TRIANY BINTI MUHAMAD ALI
Timbalan Pendaftar
Mahkamah Tinggi Malaya
Kuala Lumpur

Timbalan Pendaftar
Mahkamah Tinggi Malaya
Kuala Lumpur

PENGINDORSAN DIBAWAH ATURAN 45 KAEDAH 7 KAEDAH-KAEDAH MAHKAMAH 2012

Jika kamu, Tan See Meng (No. K/P: 570604-10-6303), yang dinamakan dalam ini, dan/atau ejen-ejen, dan/atau pekhidmat-pekhidmat dan/atau pekerja-pekerja kamu tidak mematuhi Perintah kami boleh dikenakan proses pelaksanaan bagi maksud memaksa kamu supaya mematuhinya.

Jika kamu, Tan See Nang (No. K/P: 440517-10-5147), yang dinamakan dalam ini, dan/atau ejen-ejen, dan/atau pekhidmat- pekhidmat dan/atau pekerja-pekerja kamu tidak mematuhi Perintah

WA-22NCC-246-06/2022

Encl No. 65

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DALAM NEGERI WILAYAH PERSEKUTUAN KUALA LUMPUR

(BAHAGIAN DAGANG)

GUAMAN NO.: WA-22NCC-246-06/2022

ANTARA

ABLE OILS & FATS SDN BHD
(No. Syarikat: 201601034916 [1205857-A]) ...PLAINTIF

DAN

1. TAN SEE MENG
(No. K/P: 570604-10-6303)

2. TAN SEE NONG
(No. K/P: 440517-10-5147)

3. LIM PECK HONG
(No. K/P: 601206-10-5304)

4. SAWIT RAYA SDN BHD
(No. Syarikat. 198301009872 [105130-K])

5. KIAN HUAT OILMILLS SDN BHD
(No. Syarikat. 196501000151)

...DEFENDAN-DEFENDAN

DI HADAPAN HAKIM
ONG CHEE KWAN
PADA 12 OGOS 2022

DALAM KAMAR
MELALUI PLATFORM SIDANG
VIDEO SECARA ZOOM

PERINTAH UNTUK PERINTAH-PERINTAH LANJUTAN
(Kandungan 41)

ATAS PERMOHONAN pihak Plaintif yang dinamakan di atas DAN SETELAH MEMBACA Notis Permohonan (Kandungan 41) bertarikh pada 29 Julai 2022 dan kesemuanya yang difailkan di sini DAN SETELAH MENDENGAR Lim Koon Huan (Siew Ka Yan bersamanya), peguamcara bagi pihak Plaintif dan Awg Armadajaya bin Awg Mahmud (Hasshahari Bin Johari Mawi bersamanya), peguamcara bagi pihak Defendan-Defendan, MAKA ADALAH PADA HARI INI DIPERINTAHKAN bahawa:

(1) Pasukan Pengurusan Plaintif (termasuk tetapi tidak terhad kepada Tan Chin Yang, Phuar Leong Thye dan Low Shu Hui) berhak mengetuai pengurusan Defendan Ke-4 dan Ke-5 dan bertanggungjawab ke atas pengurusan harian Defendan Ke-4 dan Ke-5 dan penyelarasan aktiviti-aktiviti pentadbiran dan perniagaan Defendan Ke-4 dan Ke-5;

(2) Pasukan Pengurusan Plaintif diberi akses penuh dan tanpa had kepada semua buku dan rekod Defendan Ke-4 dan Ke-5, termasuk tetapi tidak terhad kepada penyata-penyata bank, laporan-laporan pengeluaran harian, laporan-laporan kapasiti tangki, laporan-laporan semakan stok akhir bulan, laporan-laporan stok minyak, ringkasan harian untuk minyak, masuk dan keluar, laporan-laporan penghantaran harian, buku log rumah pam, rekod-rekod aktiviti penapisan dan pemecahan, kontrak-kontrak jualan dan invois-invois, pesanan-pesanan penghantaran, pesanan-pesanan pembelian, kontrak-kontrak, e-mel syraikat, surat-menyurat, kamera pemantauan dan rakaman-rakaman pengawasan keselamatan;

(3) Pasukan Pengurusan Plaintif diberi kuasa-kuasa berikut bagi tujuan menjalankan pengurusan harian Defendan Ke-4 dan Ke-5 dan penyelarasan aktiviti-aktiviti pentadbiran dan perniagaan Defendan Ke-4 dan Ke-5:

(a) Untuk mengambil kawalan sepenuhnya terhadap premis Defendan Ke-4 dan Ke-5 termasuk tetapi tidak terhad kepada pejabat dan kilang penapisan;

(b) Untuk mengambil kawalan sepenuhnya keselamatan premis Defendan Ke-4 dan Ke-5 termasuk tetapi tidak terhad kepada pejabat dan kilang penapisan;

(c) Untuk memantau pergerakan-prgerakan mana-mana lori tangki minyak yang keluar masuk dari premis Defendan Ke-4 dan Ke-5;

(d) Untuk menjalankan pemeriksaan stok secara fizikal terhadap minyak dan barangan di premis Defendan Ke-4 dan Ke-5;

(e) Untuk mendapatkan dan menjalankan sebarang perniagaan atau transaksi Defendan Ke-4 dan Ke-5;

(f) Untuk menggaji atau menamatkan pekerja-pekerja dan/atau kontraktor-kontraktor bebas (independent) bagi pihak Defendan Ke-4 dan Ke-5;

(g) Untuk mengeluarkan cek-cek dan membuat pembayaran-pembayaran dalam perjalanan biasa perniagaan Defendan Ke-4 dan Ke-5, termasuk tetapi tidak terhad kepada pembayaran kepada pembekal-pembekal, vendor dan kontaraktor-kontraktor serta pembayaran untuk pinjaman-pinjaman yang diperoleh oleh Defendan Ke-4 dan Ke-5 daripada institusi kewangan;

(h) Untuk melaksanakan atau mengeluarkan apa-apa dokumen, surat atau e-mel atas nama Defendan Ke-4 dan Ke-5;

(i) Untuk melantik mana-mana orang, ejen, akauntan, juruukur atau orang lain yang berkelayakan profesional untuk membantu Pasukan Pengurusan Plaintif termasuk tetapi tidak terhad kepada menjalankan tinjauan stok dan semakan stok;

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(j) Untuk berhubung dengan mana-mana pihak berkuasa yang berkaitan termasuk tetapi tidak terhad kepada Jabatan Kastam Di-Raja Malaysia, Lembaga Hasil Dalam Negeri, Polis Di-Raja Malaysia dan Lembaga Minyak Sawit Malaysia unluk membuat atau menarik balik sebarang laporan atas nama Defendan Ke-4 dan Ke-5;

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(k) Untuk mengambil semua langkah lain yang difikirkan perlu oleh Pasukan Pengurusan Plaintif;

(4) Pengawal-pengawal keselamatan kini, pengawal-pengawal Jabatan Sukarelawan Malaysia (RELA) dan/atau mana-mana pengawal-pengawal keselamatan atau pegewai-pegawei keselamatan yang dilantik oleh Defendan-Defendan Pertama, Ke-2 dan/atau Ke-4 dan/atau agen-agen mereka dikeluarkan dari premis Defenden Ke-4 dan Ke-5 dan digantikan dengan TKM Force Security Sdn Bhd (No. Ahli Persatuan Industri Keselamatan Malaysia: 0907);

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(5) Sawit Raya Transport Sdn Bhd dan/atau pemandu-pemandu mereka iaitu Ridzuan Bin Rembon (No. K/P: 751029-10-5859), Nazaruddin Bin Abd Jalil (No. K/P: 710912-06-5365), Mazlin Bin Ngaton (No. K/P. 700403-10-5585), Azrie bin Mahmood (No. K/P: 850507-10-5313), Ezzie Elman bin Khairudzaman (No. K/P: 930213-10-5385) dan Kasinathan a/l Manikam (No. K/P: 570130-10-5455) mengalih keluar smua lori tangki minyak atau kenderaan-kenderaan milik atau didaftarkan di bawah Sawit Raya Transport Sdn Bhd dari premis Defendan Ke-4 dan Ke-5 di Lot 2227, Jalan Kasawari, Batu 9, Kebun Baru, 42500 Telok Panglima Karang, Selangor dan selepas itu lori-lori tangki minyak dan kenderaan-kenderaan tersebut dihalang masuk semula ke premis Defendan Ke-4 dan Ke-5 tanpa kebenaran bertulis daripada Pasukan Pengurusan Plaintif;

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(6) Pekhidmat-pekhidmat atau ejen-ejen dan/atau pekerja-pekeria Defendan Ke-4 khususnya Tan Vin Vin (No. K/P: 030605-10-5036), Ngooi Mong San (No. K/P: 750519-10-5048), Tan Chuan Ling (No. K/P: 870405-10- 5556), Tan Heng Chian (No. K/P: 880706-43-5259), Tan Heng Kim (No. K/P: 771008-10-6009), Logeswaran A/L Dhanaraj (No. K/P: 861020-43-5947) dan Kuik Pek Li (No. K/P: 780106-10-6074) menjalankan dan mematuhi sebarang arahan yang dikeluarkan oleh Pasukan Pengurusan Plaintif (termasuk tetapi tidak terhad kepada Tan Chin Vang, Phuar Leong Thye dan Low Shu Hui) dalam melaksanakan kuasa mereka yang dinyatakan dalam prayer (3) di atas.

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(7) Individu-individu berikut dilantik sebagai sebahagian daripada Pasukan Pengurusan Plaintif untuk membantu Tan Chin Yang, Phuar Leong Thye dam Low Shu Hui:

I

(a) Teo Kah Yeeng (No. K/P: 780927-14-5521) [Komersial & Operasi]

(b) Khor Choon Mai (No. K/P: 740720-02-5120) [Penghantaran]

(c) Cheah Geok Kim (No. K/P: 640830-10-5430) [Sumber Manusia]

(d) Razali Bin Sareh (No: K/P: 710107-10-6291) [Pengeluaran dam Kawalan Kualiti]

(e) Lim Cim Yee (No. K/P: 850805-05-5238) [Pengeluaran dan Kawalan Kualiti]

(f) Chong Wai Xian (No. K/P: 941224-14-5079) [Perakaunan]

(g) Nur Farizan Binti Suradi (No. K/P: 890208-10-5344) (Perakaunan)

(8) Defendan Pertama dan Ke-2 dan/atau pekhidmat-pekhidmat atau ejen-ejen dan/atau pekerja-pekerja Defendan Ke-4 khususnya Tan Vin Vin (No. K/P: 830605-10-5036), Ngooi Mong San (No. K/P: 750519-10-5048) Tan Chuan Ling (No. K/P: 870405-10-5556), Tan Heng Chian (No. K/P: 880706-43-5259), Tan Heng Kim (No. K/P: 771008-10-6009), Logeswaran A/L Dhanaraj (No K/P: 861020-43-5947) dan Kuik Pek Li (No. K/P: 780106-10-6074) dihalang daripada mengganggu (interfering) dan menghalang Pasukan Pengurusan Plaintif daripada menjalankan pengurusan harian Defendan Ke-4 dan penyelarasan aktiviti-aktiviti pentadbiran dan perniagaan Defendan Ke-4 termasuk mengeluarkan apa-apa pekeliling atau resolusi pengarah atau mengeluarkan sebarang directives atau notis-notis atau arahan-arahan, sama ada secara bertulis atau sebaliknya yang tidak selaras atau bercanggah dengan perintah-perintah yang dipohon di sini.

(9) Pihak-pihak diberikan kebebasan untuk memohon; dan

(10) Kos dalam kausa.

Bertarikh 12 Ogos 2022.

RINI TRIANY BINTI MUHAMAD ALI
Timbalan Pendaftar
Mahkamah Tinggi Malaya
Kuala Lumpur

Timbalan Pendaftar
Mahkamah Tinggi Malaya
Kuala Lumpur

A **PENGINDORSAN DIBAWAH ATURAN 45 KAEDAH 7 KAEDAH-KAEDAH MAHKAMAH 2012**

Jika kamu, Tan See Meng (No. K/P: 570604-10-6303), yang dinamakan dalam ini dan/atau ejen-ejen, dan/atau pekhidmat-pekhidmat dan/atau pekerja-pekerja kamu tidak mematuhi Perintah kamu boleh dikenakan
B proses pelaksanaan bagi maksud memaksa kamu supaya mematuhinya.

Jika kamu, Tan See Nong (No. K/P: 440517-10-5147), yang dinamakan dalam ini, dan/atau ejen-ejen, dan/atau pekhidmat-pekhidmat dan/atau pekerja-pekerja kamu tidak mematuhi Perintah kamu boleh dikenakan proses pelaksanaan bagi maksud memaksa kamu supaya mematuhinya.

C Jika kamu, Lim Peck Hong (No. K/P: 601206-10-5304), yang dinamakan dalam ini dan/atau ejen-ejen, dan/atau pekhidmat-pekhidmat dan/atau pekerja-pekerja kamu tidak mematuhi Perintah kamu boleh dikenakan proses pelaksanaan bagi maksud memaksa kamu supaya mematuhinya.

Jika Sawit Raya Sdn Bhd (No. Syarikat. 198301009872 [105130-K]) tidak
D mematuhi Perintah ini, kamu, Tan See Meng (No. K/P: 570604.10-6303) dan Tan See Nong (No. K/P: 440517-10-5147) selaku pengarah-pengarah Sawit Raya Sdn Bhd yang tersebut boleh dikenakan proses pelaksanaan bagi maksud memaksa kamu supaya mematuhinya

E **WA-22NCC-246-06/2022**

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DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR
DALAM NEGERI WILAYAH PERSEKUTUAN KUALA LUMPUR
(BAHAGIAN DAGANG)

F **GUAMAN NO.: WA-22NCC-246-06/2022**

ANTARA

ABLE OILS & FATS SDN BHD
(dahulunya dikenali sebagai Able Export Sdn Bhd)
(No. Syarikat: 201601034916 [1205857-A])

...PLAINTIF

G DAN

1. TAN SEE MENG
(No. K/P: 570604-10-6303)

2. TAN SEE NONG
(No. K/P: 440517-10-5147)

3. LIM PECK HONG
(No. K/P: 601206-10-5304)
H

4. SAWIT RAYA SDN BHD
(No. Syarikat: 198301009872 [105130-K])

5. KIAN HUAT OILMILLS SDN BHD
(No. Syarikat: 196501000151)

...DEFENDAN-DEFENDAN

I **DI HADAPAN HAKIM**

ONG CHEE KWAN

PADA 4 OKTOBER 2022 **DALAM KAMAR**

MELALUI PLATFORM SECARA E-REVIEW

PENGHAKIMAN

Defendan-Defendan setelah memasukkan kehadiran dalam tindakan ini dan mahkamah setelah memerintahkan di bawah Aturan 81 Kaedah-Kaedah Mahkamah 2012 bahawa penghakiman sebagaimana diperuntukkkan kemudian daripada ini dicatatkan menyebelahi Plaintiff terhadap Defendan-Defendan.

ADALAH PADA HARI IN DIHAKIMKAN bahawa:

(1) Pelaksanaan Spesifik untuk Perjanjian Call Option bertarikh 5 Mac 2021 yang dimasuki di antara Defendan Pertama, Defendan Ke-2 dan Plaintif berkenaan dengan saham-saham dalam Defendan Ke-4 di mana:

(a) Defendan Pertama dan/atau Ke-2 hendaklah dalam masa 7 hari dari perintah ini menyerahkan atau menyebabkan serahan ke dalam jagaan Plaintif semua dokumen seperti yang dinyatakan dalam Jadual 1 Terpinda yang dilampirkan di sini: dan

(b) Defendan Pertama dan/atau Ke-2 hendaklah dalam tempoh 7 hari dari perintah ini melaksanakan dan menyerahkan atau menyebabkan serahan ke dalam jagaan Plaintif semua dokumen seperti yang dinyatakan dalam Jadual 1A Terpinda Semula yang dilampirkan di sini, di mana jika gagal, Pendaftar Mahkamah Yang Mulia ini diberikan kuasa untuk melaksanakan dan menguatkuasakan dokumen-dokumen dalam Jadual 1A Terpinda Semula.

(2) Pelaksanaan Spesifik untuk Perjanjian Call Option bertarikh 5 March 2021 yang dimasuki di antara Defendan Pertama. Defendan Ke-3 dan Plaintif berkenaan dengan saham-saham dalam Defendan Ke-5 di mana:

(a) Defendan Pertama dan/atau Ke-3 hendaklah dalam tempoh 7 hari dari perintah ini menyerahkan atau menyebabkan serahan ke dalam jagaan Plaintif samua dokumen seperti yang dinyatakan dalam Jadual 2 Terpinda Semula yang dilampirkan di sini; dan

(b) Defendan Pertama dan/atau Ke-3 hendaklah dalam tempoh 7 hari dari perintah ini melaksanakan dan menyerahkan atau menyebabkan serahan ke dalam jagaan Plaintif semua dokumen seperti yang dinyatakan dalam Jadual 2A Terpinda Semula yang dilampirkan di sini, di mana jika gagal, Pendaftar Mahkamah Yang Mulia ini diberikan kuasa untuk melaksanakan dan menguatkuasakan dokumen-dokumen dalam Jadual 2A Terpinda Semula.

(3) Kos ditetapkan sebanyak RM15,000.00 tertakluk kepada alokatur; dan

(4) Plaintif adalah diberikan kebebasan untuk memohon.

PENGINDORSAN DIBAWAH ATURAN 45 KAEDAH 7 KAEDAH-KAEDAH MAHKAMAH 2012

Jika kamu, Tan See Meng (No. K/P: 570604-10-6303), yang dinamakan dalam ini, dan/atau ejen-ejen, dan/atau pekhidmat-pekhidmat dan/atau pekerja-pekerja kamu tidak mematuhi Perintah kamu boleh dikenakan prosespelaksanaan bagi maksud memaksa kamu supaya mematuhinya.

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[11] The appellants are dissatisfied with the decisions of the High Court and hence, lodged Civil Appeal Nos. W-02(IM)(NCC)-1240-07/2022, W-02(IM)(NCC)-1544-08/2022 and W-02(IM)(NCC)-2041-10/2022 in this court.

[12] The respondent thereafter, on 18 May 2023 applied for security for costs *vide* encls. 31, 37 and 34 pursuant to Appeals No. 1240, 1544 and 2041, respectively.

Findings Of This Court

[13] The provisions on security for costs in the Court of Appeal are prescribed in s. 44(1) of the Courts of Judicature Act 1964 ("CJA") and r. 17(1) and/or r. 105 of the Rules of the Court of Appeal 1994 ("RCA") as follows:

Section 44 Incidental directions and interim orders

(1) In any proceeding pending before the Court of Appeal any direction incidental thereto not involving the decision of the proceeding, any interim order to prevent prejudice to the claims of parties pending the hearing of the proceeding, any order for security for costs, and for the dismissal of a proceeding for default in furnishing security so ordered may at any time be made by a Judge of the Court of Appeal.

(2) Every application under subsection (1) shall be deemed to be a proceeding in the Court of Appeal.

(3) Every order made under subsection (1) may, upon application by the aggrieved party made within ten days after the order is served, be affirmed, varied or discharged by the Court.

Rule 17 Entry of Appeal

(1) Notice of appeal may be given by filing within the time limited for bringing the appeal four copies of the notice of appeal in the Registry of the High Court at the place where the judgment, order or decision complained of was made or given by paying the prescribed fee.

The Court may on the application by the respondent, in any case where it thinks fit, order security for costs to be given, and may order security to be given for the payment of past costs relating to the matters in question in the appeal:

Provided that no order for the payment of security for costs shall be made if the appeal is brought by the Government of Malaysia or any State Government.

(2) The appellant shall, on the date of filing the notice of appeal in the Registry of the High Court, send by registered post one copy of the notice of appeal to the Registry.

(3) A list of appeals of which notice has been filed herein shall be kept in each Registry of each High Court and a consolidated list thereof shall be kept by the Registrar at Putrajaya.

(4) The Registrar of the High Court shall on receiving four copies of the notice of appeal and the prescribed fee and on the security required by sub rule (1) being lodged in Court enter the appeal in the list of appeals, stating therein the title of the cause or matter, the name of the appellant and his solicitors, if any, and the date of such entry, and shall inform the Registrar at Putrajaya of such entry.

(5) The Registrar shall on receipt of information of the entry of an appeal enter the like particulars in the consolidated list of appeals and shall allocate a number to the appeal and shall inform the appellant's solicitor and the Registrar of the High Court who entered the appeal of the number so allocated which shall thenceforth form part of the title of the appeal.

Rule 105 Inherent powers of the Court

For the avoidance of doubt, it is declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.

[14] Generally, security for costs of appeal is sought by the respondent in defending against the appellant's appeal. In *Ooi Meng Khin v. Amanah Scotts Properties (KL) Sdn Bhd & Ors And Another Appeal* [2013] CLJU 1517; [2013] 1 LNS 1517; [2013] 5 MLJ 773, Mohd Hishamudin JCA held as follows with emphasis added by us:

[20] In our judgment, on the facts, we accept the three grounds submitted by the appellants in urging us to dismiss the motions as being valid grounds. Whatever may have been the law and practice in the United Kingdom, we, on our part, however, accept *Menon v. Abdullah Kutty* as

good and binding authority to dismiss the motions on the said three grounds. This case, cited by the appellants, concerned an application for further security for costs made under r. 18(1) of the Federal Court (Civil Appeals) (Transitional) Rules 1963. Rule 18(1) provides:

> Entry of appeal
>
> 18(1) Notices of appeal may be given by filing within the time limited for bringing the appeal four copies of the notice of appeal in the Registry of the High Court at the place where the judgment, order or decision complained of was made or given by paying the prescribed fee and by lodging in Court at the same time the sum of five hundred ringgit as security for the costs of the appeal:
>
> Provided that the Court may at any time, in any case where it thinks fit, order further security for costs to be given, and may order security to be given for the payment of past costs relating to the matter in question in the appeal:
>
> Provided further that no deposit by way of security for costs shall be required if the appeal is brought by the Government of Malaysia or any State Government.

(These transitional 1963 Rules of the Federal Court were subsequently replaced by the Rules of the Federal Court 1980 *vide* PU(A) 33/1980, that came into force on 1 June 1980.) It is pertinent to note that the provisions of this r. 18(1) are exactly similar as the provisions in r. 17(1) of the present Rules of the Court of Appeal. The reason for the application for further security for costs in this case cited is the same as in the present case, that is to say, the impecuniosity of the appellant. In *Menon v. Abdullah Kutty*, Raja Azlan Shah FJ (as he then was) in delivering the judgment of the Federal Court said:

> *Rule 18(1) of the Federal Court (Civil Appeals) (Transitional) Rules 1963 gives this court a discretion to order further security for costs of an appeal 'at any time, in any case where it thinks fit', Thus this is a discretionary remedy to be exercised in accordance with well-known principles. This court is not bound by any hard and fast rules, but has to look at all the circumstances of the case* (see *Abu bin Mohamed v. Voo Fui Tong & Anor* [1938] 1 MLJ 140) ...
>
> (emphasis added)

[15] Furthermore in, *Ling Khee Ming v. Ling Shew Kue & Anor* [2018] CLJU 1139; [2018] 1 LNS 1139, Hamid Sultan bin Abu Backer JCA, held as follows with emphasis added by us:

> [11] *Rule 17 of RCA 1994 makes provision for the Court of Appeal in deserving cases to order further security of costs for the payment of past costs. The threshold to satisfy this part of the rule is high and it will usually be exercised in a case where plaintiff or defendants on the face of record has no merit or appears to be vexatious.* It is not sufficient just to demonstrate to the court that the appellant is impecunious to meet with costs, as such an approach will not be sufficient

to balance with the jurisprudence relating to access to justice. That is to say that the poor, needy inclusive of natives, costs related to costs on party to party basis ordered by the trial court.

...

[15] When making an application for security for costs under Rule 17 of RCA 1994, it is incumbent upon the applicant to satisfy one of the requirements set out in Order 23 rule 1 of RC 2012, failing which it may not be a fit application for the Court of Appeal to exercise its jurisdiction as stated in the said rules. That is to say, the test for a 'fit' application necessarily must satisfy the criteria in Order 23 of RC 2012 *per se*. The strict provision of Order 23 has everything to do with access to justice, the Federal Constitution and the right of appeal under the legislation. Thus, Rule 17 of RCA 1994 must be read together with Order 23 of RC 2012 to appreciate the underlying jurisprudence for security for costs as well as access to justice. Ultimately, the decision whether or not to allow an order for security for costs as well as the quantum is entirely vested with the discretion of the court. The said discretion cannot be arbitrarily exercised.

[16] The provision of security for costs in r. 17 of the RCA must hence be read with O. 23 of the Rules of Court 2012 ("RC") which prescribes:

Order 23 Security for costs

1. (1) Where, on the application of a defendant to an action or other proceedings in the Court, it appears to the Court:

(a) that the plaintiff is ordinarily resident out of the jurisdiction;

(b) that the plaintiff (not being a plaintiff who is suing in a representative capacity) is a nominal plaintiff who is suing for the benefit of some other person and that there is reason to believe that he will be unable to pay the costs of the defendant if ordered to do so;

(c) subject to paragraph (2), that the plaintiff's address is not stated in the writ or originating summons or is incorrectly stated therein; or

(d) that the plaintiff has changed his address during the course of the proceedings with a view to evading the consequences of the litigation,

then, if, having regard to all the circumstances of the case, the Court thinks it just to do, it may order the plaintiff to give such security for the defendant's costs of the action or other proceedings as it thinks just.

(2) The Court shall not require a plaintiff to give security by reason only of subparagraph (1)(c) if he satisfies the Court that the failure to state his address or the misstatement thereof was made innocently and without an intention to deceive.

The provision in O. 23 of the RC are nonetheless still subject to additional considerations laid down by the English Court of Appeal of *Sir Lindsay Parkinson Co Ltd v. Triplan Ltd* [1973] 2 All ER 273 adopted in *Luminous Crossroads Sdn Bhd v. Lim Kong Huat Construction* [2002] 5 CLJ 100. These are:

(i) whether the claim is *bona fide* with good prospect of success;

(ii) whether there is an admission in the pleadings or elsewhere that the money is due;

(iii) whether there is payment into court of a substantial sum of money (O. 22A r. 5(1) of the RC);

(iv) whether the application for security for costs is being used to stifle a genuine claim; and

(v) whether the want of means of the plaintiff is a result of the conduct of the defendant.

These additional considerations were formulated for applications for security for costs in the High Court but we are of the view that they are also relevant to applications for security for costs in this court subject to the necessary modification thereto to relate to appeals.

See also *Kasturi Palm Products v. Palmex Industries Sdn Bhd* [1985] CLJU 149; [1985] 1 LNS 149; [1986] 2 MLJ 310.

[17] That notwithstanding where it involves a body corporate incorporated under the Companies Act 2016 ("CA"), we add that r. 17 RCA must also be read with s. 580A CA which prescribes:

> 580A Security for costs
>
> (1) Where a company is the plaintiff in any action or other proceedings and if it appears by a credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if the defendant is successful in his defence, the Court may order the plaintiff to give sufficient security for all the costs and to stay all action or proceedings until the security is given.
>
> (2) The Court may direct the costs of any action or proceedings to be borne by the party to the action or proceedings.

[18] In *Skrine & Co v. MBf Capital Bhd & Anor & Other Appeals* [1998] 3 CLJ 432, Gopal Sri Ram JCA (later FCJ) held as follows when dealing with the equivalent predecessor provision in s. 351 of the Companies Act 1965 as follows with emphasis added by us:

> [1] Section 351 of the Companies Act 1965 provides for a two-stage inquiry into whether security for costs should be awarded where the plaintiff is a company. The first step is for the court to determine whether

there is credible evidence that the company will be unable to pay the defendant's costs, and the second is to ascertain whether that evidence supports the belief that the company will be unable to do so.

...

[3] A company need not have ready access to cash in order to satisfy a court that it is able to pay the costs of an action it brings, in the event of a failure. It need only satisfy the court that it has sufficient assets to satisfy an order of costs against it. The appeal on the issue of security for costs therefore failed.

See also *Haidakota (M) Sdn Bhd v. Tan Tiam Chai & Another Appeal* [2009] 1 CLJ 699; [2008] MLJU 654.

[19] Subject to the above requirements, it is ultimately still the discretion of this court on whether it is just and reasonable to order security for costs on the peculiar facts and circumstances.

[20] The respondent here contended that the first to third appellants ought to pay security for costs because all the three appeals have no good prospect of success. Furthermore, the disposal of these appeals is likely to be protracted by reason of the bankruptcy of the first appellant on 24 March 2023 and the judicial management order ("JMO") obtained against the fourth appellant on 12 January 2023 with no visibility and certainty on outcome. This will invariably subject the respondent to having all the three appeals hanging over the respondent unnecessarily without finality.

[21] Besides the impecuniosity of the first and fourth appellants, the respondent contended that it is prejudicial and unfair to the respondent if the appellants are allowed to continue to pursue the appeals to put the respondent to be further out of pocket on costs despite that the appellants have yet to pay the past costs awarded to the respondent in the High Court.

[22] As the result, the respondent sought for security for costs in the total sum of RM125,000 comprising of RM35,000 unpaid High Court costs and RM30,000 for each of the three appeals.

[23] The appellants in opposing contended the security for costs application were made by the respondent without prior notification as well as not made at the earliest opportunity; hence irregular following *Menon v. Abdullah Kutty* [1974] CLJU 92; [1974] 1 LNS 92; [1974] 1 MLJ 130.

[24] Moreover, the appellants contended that other than the impecuniosity of the first and fourth appellants, the respondent failed to demonstrate other cogent circumstances to justify the provision of security of costs. In respect of the unpaid cost orders awarded to the respondent in the High Court, the appellants replied that they were not established to be due.

A **[25]** Finally, the appellants contended that the amount of security for costs sought by the respondent is manifestly excessive.

[26] We will firstly deal with the first to third appellants. On the evidence before us, we find that they are all not foreign parties residing out of jurisdiction or nominal parties acting on behalf for the benefit of others or
B parties who are constantly changing address to evade the consequences of the appeal. In this respect, they do not meet the threshold requirements envisaged in the O. 23 r. 1 of the RC. Furthermore, albeit we find that their appeal may *prima facie* seem weak, but they are not hopeless.

C **[27]** As to the first appellant who is a bankrupt and therefore impecunious, we however find that, unlike in respect of a body corporate incorporated under the CA, impecuniosity is not *per se* a cogent factor with regard to ordering security for costs. In this regard, Arifin Zakaria J (later CJ) held as follows in *Faridah Begum Abdullah v. Dato' Michael Chong* [1995] 2 CLJ 951; [1995] 2 MLJ 404:

D

> Apart from the said property, the plaintiff also claims to be a director of two local companies. But the defendant in his affidavit (encl. 18A) claims that these two companies do not have any substantial assets and both of them are inactive. The plaintiff did not rebut these allegations either. It is also not disputed that the plaintiff is now a bankrupt. In the above
> E circumstances, I am of the view that the defendant's apprehension over the plaintiff's ability to meet any order as to costs that may be made by the court is not without basis. However, the plaintiff's impecuniosity by itself is not a sufficient ground for me to make the order for security for costs. As said by the Bingham LJ in *Thune & Anor v. London Properties Ltd & Ors* [1990] 1 All ER 972 at p 979; [1990] 1 WLR 562 at pp 571-572:
>
> F
>
> > In approaching that question it cannot be too emphatically stated that impecuniosity of a personal plaintiff is never of itself enough to confer on the court a discretion to order security. It is not a ground in O. 23 r. 1(1) ... But I am for my part firmly of the opinion that it is a matter which the court may, and in a proper case should,
> > G consider in exercising a discretion where power to make an order is established.

See also *Ooi Meng Khin v. Amanah Scotts Properties (KL) Sdn Bhd & Ors And Another Appeal* (*supra*).

H **[28]** We are aware that the first to third appellants have failed to pay the respondent the past costs ordered by the High Court. It is an *indicia* of impecuniosity of the second and third appellants too. However, we are of the view that these past costs which are due and payable should be recovered through enforcement proceedings instead of being ordered as security for costs.

I

[29] Moving on to the fourth and fifth appellants, it is plain that the fourth appellant which has been placed under JMO is impecunious and unable to pay its costs. Consequently, we find that the security for costs ought to be accordingly ordered pursuant to s. 580A of the CA. As for the fifth appellant which is dormant, it is reasonable for us to infer that there is no income stream as far as the fifth appellant is concerned. The sole asset of the fifth appellant which is the land that houses the factory operating that produces the edible oil cannot in our view be considered for security for costs because it formed part and parcel of the subject matter of the agreement that is now under appeal which may form part of the asset which ultimately belong to the respondent. It follows therefore that the fifth appellant is also impecunious and unable to pay its costs

[30] In the premises, we find that the respondent has justifiably made out its case that security for costs ought to be ordered against the fourth and fifth appellants.

[31] We are lastly mindful that the appellants have also implored us in reliance on the case of *Menon v. Abdullah Kutty* (*supra*) that security for costs ought not to be ordered because there was no prior notice to seek security for costs served by the respondent on the appellants as well as that the application here has not been made with promptitude. Although we acknowledge it is good practice, but it is however our view that there is no mandatory requirement of service of a prior notice to seek security for costs expressly required in s. 44(1) of the CJA and r. 17(1) of the RCA. Additionally, we do not find that the respondent was lackadaisical which resulted in inordinate delay in the making of its application for security for costs in the circumstances herein. The appellant has also not demonstrated that it has suffered prejudice in any way as the result of the alleged delay.

[32] As to the amount of the security for costs, we assess a fair and reasonable total cost of RM50,000 for all the three forthcoming interlocutory matter (IM) appeals which will be heard together.

Conclusion

[33] It is for the foregoing reasons that we ordered security for costs as so ordered.